

## § 240.15a-1

## 17 CFR Ch. II (4-1-02 Edition)

Eight copies of such information shall be filed with the Commission.

[33 FR 11017, Aug. 2, 1968, as amended at 34 FR 6101, Apr. 4, 1969; 51 FR 42072, Nov. 20, 1986]

### EXEMPTION OF CERTAIN OTC DERIVATIVES DEALERS

#### § 240.15a-1 Securities activities of OTC derivatives dealers.

PRELIMINARY NOTE: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-regulatory organization (§ 240.15b9-2), regular broker-dealer margin rules (§ 240.36a1-1), and application of the Securities Investor Protection Act of 1970 (§ 240.36a1-2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§ 240.15a-1), specified internal risk management control systems (§ 240.15c3-4), recordkeeping obligations (§ 240.17a-3(a)(10)), and reporting responsibilities (§ 240.17a-12). They are also subject to alternative net capital treatment (§ 240.15c3-1(a)(5)). This rule 15a-1 uses a number of defined terms in setting forth the securities activities in which an OTC derivatives dealer may engage: “OTC derivatives dealer,” “eligible OTC derivative instrument,” “cash management securities activities,” and “ancillary portfolio management securities activities.” These terms are defined under Rules 3b-12 through 3b-15 (§ 240.3b-12 through § 240.3b-15).

(a) The securities activities of an OTC derivatives dealer shall:

(1) Be limited to:

(i) Engaging in dealer activities in eligible OTC derivative instruments that are securities;

(ii) Issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;

(iii) Engaging in cash management securities activities;

(iv) Engaging in ancillary portfolio management securities activities; and

(v) Engaging in such other securities activities that the Commission designates by order pursuant to paragraph (b)(1) of this section; and

(2) Consist primarily of the activities described in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section; and

(3) Not consist of any other securities activities, including engaging in any

transaction in any security that is not an eligible OTC derivative instrument, except as permitted under paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of this section.

(b) The Commission, by order, entered upon its own initiative or after considering an application for exemptive relief, may clarify or expand the scope of eligible OTC derivative instruments and the scope of permissible securities activities of an OTC derivatives dealer. Such orders may:

(1) Identify other permissible securities activities;

(2) Determine that a class of fungible instruments that are standardized as to their material economic terms is within the scope of eligible OTC derivative instrument;

(3) Clarify whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument; or

(4) Clarify whether certain securities activities are within the scope of ancillary portfolio management securities activities.

(c) To the extent an OTC derivatives dealer engages in any securities transaction pursuant to paragraphs (a)(1)(i) through (a)(1)(v) of this section, such transaction shall be effected through a registered broker or dealer (other than an OTC derivatives dealer) that, in the case of any securities transaction pursuant to paragraphs (a)(1)(i), or (a)(1)(iii) through (a)(1)(v) of this section, is an affiliate of the OTC derivatives dealer, except that this paragraph (c) shall not apply if:

(1) The counterparty to the transaction with the OTC derivatives dealer is acting as principal and is:

(i) A registered broker or dealer;

(ii) A bank acting in a dealer capacity, as permitted by U.S. law;

(iii) A foreign broker or dealer; or

(iv) An affiliate of the OTC derivatives dealer; or

(2) The OTC derivatives dealer is engaging in an ancillary portfolio management securities activity, and the transaction is in a foreign security, and a registered broker or dealer, a bank, or a foreign broker or dealer is acting as agent for the OTC derivatives dealer.

(d) To the extent an OTC derivatives dealer induces or attempts to induce any counterparty to enter into any securities transaction pursuant to paragraphs (a)(1)(i) through (a)(1)(v) of this section, any communication or contact with the counterparty concerning the transaction (other than clerical and ministerial activities conducted by an associated person of the OTC derivatives dealer) shall be conducted by one or more registered persons that, in the case of any securities transaction pursuant to paragraphs (a)(1)(i), or (a)(1)(iii) through (a)(1)(v) of this section, is associated with an affiliate of the OTC derivatives dealer, except that this paragraph (d) shall not apply if the counterparty to the transaction with the OTC derivatives dealer is:

- (1) A registered broker or dealer;
- (2) A bank acting in a dealer capacity, as permitted by U.S. law;
- (3) A foreign broker or dealer; or
- (4) An affiliate of the OTC derivatives dealer.

(e) For purposes of this section, the term *hybrid security* means a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest or other rates, commodities, securities, indices, quantitative measures, or other financial or economic interests or property of any kind, or any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence (or any combination, permutation, or derivative of such contract or underlying interest).

(f) For purposes of this section, the term *affiliate* means any organization (whether incorporated or unincorporated) that directly or indirectly controls, is controlled by, or is under common control with, the OTC derivatives dealer.

(g) For purposes of this section, the term *foreign broker or dealer* means any person not resident in the United States (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by

§ 240.15a-6) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of “broker” in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) or “dealer” in section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)).

(h) For purposes of this section, the term *foreign security* means any security (including a depositary share issued by a United States bank, provided that the depositary share is initially offered and sold outside the United States in accordance with Regulation S (17 CFR 230.901 through 230.904)) issued by a person not organized or incorporated under the laws of the United States, provided the transaction that involves such security is not effected on a national securities exchange or on a market operated by a registered national securities association; or a debt security (including a convertible debt security) issued by an issuer organized or incorporated under the laws of the United States that is initially offered and sold outside the United States in accordance with Regulation S (17 CFR 230.901 through 230.904).

(i) For purposes of this section, the term *registered person* is:

(A) A natural person who is associated with a registered broker or dealer and is registered or approved under the rules of a self-regulatory organization of which such broker or dealer is a member; or

(B) If the counterparty to the transaction with the OTC derivatives dealer is a resident of a jurisdiction other than the United States, a natural person who is not resident in the United States and is associated with a broker or dealer that is registered or licensed by a foreign financial regulatory authority in the jurisdiction in which such counterparty is resident or in which such natural person is located, in accordance with applicable legal requirements, if any.

[63 FR 59396, Nov. 3, 1998]

## § 240.15a-2

### EXEMPTION OF CERTAIN SECURITIES FROM SECTION 15(A)

#### **§ 240.15a-2 Exemption of certain securities of cooperative apartment houses from section 15(a).**

Shares of a corporation which represent ownership, or entitle the holders thereof to possession and occupancy, of specific apartment units in property owned by such corporations and organized and operated on a cooperative basis are hereby exempted from the operation of section 15(a) of the Securities Exchange Act of 1934, when such shares are sold by or through a real estate broker licensed under the laws of the political subdivision in which the property is located.

(Secs. 3, 48 Stat. 882, as amended, 895, as amended; 15 U.S.C. 78c, 78o)

[13 FR 8204, Dec. 22, 1948]

#### **§ 240.15a-3 [Reserved]**

#### **§ 240.15a-4 Forty-five day exemption from registration for certain members of national securities exchanges.**

(a) A natural person who is a member of a national securities exchange shall, upon termination of his association with a registered broker-dealer, be exempt, for a period of forty-five days after such termination, from the registration requirement of section 15(a) of the Act solely for the purpose of continuing to effect transactions on the floor of such exchange if (1) such person has filed with the Commission an application for registration as a broker-dealer and such person complies in all material respects with rules of the Commission applicable to registered brokers and dealers and (2) such exchange has filed with the Commission a statement that it has reviewed such application and that there do not appear to be grounds for its denial.

(b) The exemption from registration provided by this rule shall not be available to any person while there is pending before the Commission any proceeding involving any such person pursuant to section 15(b)(1)(B) of the Act.

[41 FR 18290, May 3, 1976]

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#### **§ 240.15a-5 Exemption of certain nonbank lenders.**

A lender approved under the rules and regulations of the Small Business Administration shall be exempt from the registration requirement of section 15(a) (1) of the Act if it does not engage in the business of effecting transactions in securities or of buying and selling securities for its own account except in respect of receiving notes evidencing loans to small business concerns and selling the portion of such notes guaranteed by the Small Business Administration through or to a registered broker or dealer or to a bank, a savings institution, an insurance company, or an account over which an investment adviser registered pursuant to the Investment Advisers Act of 1940 exercises investment discretion.

[41 FR 50645, Nov. 17, 1976]

### REGISTRATION OF BROKERS AND DEALERS

#### **§ 240.15a-6 Exemption of certain foreign brokers or dealers.**

(a) A foreign broker or dealer shall be exempt from the registration requirements of sections 15(a)(1) or 15B(a)(1) of the Act to the extent that the foreign broker or dealer:

(1) Effects transactions in securities with or for persons that have not been solicited by the foreign broker or dealer; or

(2) Furnishes research reports to major U.S. institutional investors, and effects transactions in the securities discussed in the research reports with or for those major U.S. institutional investors, provided that:

(i) The research reports do not recommend the use of the foreign broker or dealer to effect trades in any security;

(ii) The foreign broker or dealer does not initiate contact with those major U.S. institutional investors to follow up on the research reports, and does not otherwise induce or attempt to induce the purchase or sale of any security by those major U.S. institutional investors;

(iii) If the foreign broker or dealer has a relationship with a registered